

DAVID L. RICHARDS

IBLA 84-360

Decided June 28, 1985

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring lode mining claims abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

BLM may properly declare an unpatented mining claim abandoned and void where a copy of the notice of location of the claim was not received by BLM until after the deadline for filing under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982), although it was purportedly mailed prior thereto.

APPEARANCES: David L. Richards, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

David L. Richards has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated February 16, 1984, declaring the Richstone Lode Nos. 1 and 2 lode mining claims abandoned and void. The basis for the decision was claimant's failure to file with BLM, within 90 days after the date of location of the claims, copies of the notices of location of the claims, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982). 1/

Appellant's mining claims were located November 5, 1983, in Josephine County, Oregon. On February 9, 1984, BLM received copies of the notices of location for the claims in an envelope postmarked on February 7, 1984. 2/

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1/ Consideration of this appeal was stayed pending judicial review of the mining claim recordation provisions of FLPMA. The constitutionality of these provisions was recently upheld by the Supreme Court. United States v. Locke, 105 S. Ct. 1785 (1985).

2/ The envelope also bears a red postmark with the notation "P. B. Meter 1444057" and the date Feb. 2, 1984. In a note to the Board, dated Mar. 13, 1984, a BLM employee states that:

Section 314(b) of FLPMA requires the owner of an unpatented mining claim located after October 21, 1976, to file with BLM a copy of the location notice "within ninety days after the date of location of such claim." Therefore, the statutory deadline for filing the copies of appellant's notices of location was February 3, 1984.

In his statement of reasons for appeal, appellant contends that he "sent" the copies of the notices of location on February 2, 1984, which documents should have been received on February 3, 1984, and that any delay in filing the documents timely is attributable to the post office.

[1] Section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982), provides that failure to file a copy of a notice of location "as required by" section 314(b) of FLPMA "shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* by the owner." In such circumstances, the claim is thereby rendered void. 43 CFR 3833.4(a). Thus, it is well established that where the owner of an unpatented mining claim fails to file a copy of the notice of location of the claim within 90 days after the date of location, BLM properly declares the claim abandoned and void. B. Rigby Young, 69 IBLA 88 (1982), and cases cited therein.

In the present case, appellant states that he mailed the copies of his notices of location on February 2, 1984, one day before the statutory deadline for filing the documents. However, depositing a document in the mails does not constitute filing under Departmental regulations. 43 CFR 1821.2-2(f). File is defined to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.0-5(m). 3/ Accordingly, appellant failed to file timely where the copies of the notices of location were not received until February 9, 1984.

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fn. 2 (continued)

"After reviewing the claimant's appeal, we contacted the Postmaster in Cave Junction, Oregon, to question why there are 2 postmark dates on the claimant's envelope. One date is in red, dated February 2, 1984; the other is black showing February 7, 1984.

"He explained to us that the red postmark date is from a metering machine device and the date is usually set by the renter of the machine. Since the post office did not receive the envelope until a much later date, the envelope was again restamped by the post office on February 7th to show when the document was actually mailed.

"Our receipting of the notice of location on Feb. 9th was usual since mailing time from Cave Junction to Portland requires 2 days for delivery."

3/ "Timely filed" as it pertains to annual filings of evidence of assessment work or notice of intention to hold claims is defined to include receipt by January 19th after the filing period in an envelope "bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law." 43 CFR 3833.0-5(m). However, the regulation expressly provides that this 20-day period does not apply to the filing of a notice of location.

The record also indicates that while appellant metered the envelope bearing the copies of his notices of location on February 2, 1984, he did not mail the envelope until February 7, 1984. In any case, even assuming that BLM's receipt of the documents on February 9, 1984, is attributable to untimely delivery by the post office, it is well established that a claimant, in mailing a document, must bear the consequences of such untimely delivery. Phil E. Parks, 69 IBLA 48 (1982), and cases cited therein.

As we found in B. Rigby Young, *supra* at page 89:

The Board has consistently held that the statute permits no exception to the requirements of timely filing of the notice of location with BLM, and that it has no authority to excuse a late filing or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979).

We conclude that BLM properly declared appellant's mining claims abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Bruce R. Harris  
Administrative Judge

